

**Town of Lincoln**

**Zoning Board of Review**

**100 Old River Road, Lincoln, RI**

**Minutes of July 13, 2010 Meeting**

**Present: Jina Karampetsos, David DeAngelis, Bernard McNamara, Barry Nickerson, Lori Lyle, Joelle Sylvia (Solicitor's Office).**

**Excused: John Bart, Mark Enander**

### **Minutes**

**Motion made by Member McNamara and seconded by Member Nickerson to accept the June 2010 Minutes as presented. Motion carried with a 5-0 vote.**

### **Correspondence**

**Letter dated June 7, 2010 addressed to Russell Hervieux, Zoning Official on the Moore application requesting continuance of their application to the August 2010 agenda. Motion made by Member Nickerson to continue the application. Motion seconded by Member McNamara. Motion carried with a 5-0 vote.**

### **Applications:**

**Satish & Sunitha Nutakki, 224 Old River Road, Lincoln, RI - Application for Dimensional Variance seeking corner lot setback relief for the construction of a deck.**

**AP 31, Lot 26 Zoned: RS 12**

**Represented by: Mark Krieger, Esquire, 132 Old River Road, Lincoln, RI**

**Chair informed attorney for applicants that two Board members were absent from the original hearing last month and a quorum was not present to hear the application; would he be agreeable to continuing the application to the August agenda. Attorney agreed.**

**Motion made by Member Lyle and seconded by Member McNamara to continue the application to the August agenda. Motion carried with a 5-0 vote.**

**T-Mobile Northeast LLC, 960 Turnpike Street #28, Canton, MA/Raymond & Sonjia George, 27 Ducarl Drive, Lincoln, RI – Application for Use Variance for the installation of a wireless communication facility on a NGrid transmission tower located on the property.**

**AP 23, Lot 196 Zoned: RA 40**

**Represented by: Edward Pare, Esquire**

**This application was continued from the June agenda. Chair read into the record standards that need to be met for a Use Variance.**

**Attorney addressed the Board stating applicant would like to attach 3 antennas to an existing seventy-eight (78) inch pipe at the side and**

**the co axle cables would run down to equipment. Height of the tower would need to be increased by seven (7) feet. They are before the Board per the Town ordinance to be in compliance. A chain link fence without barbed wire will surround the equipment.**

## **Witness**

**Irma Guino, Radio Frequency Engineer**

**She has appeared as an expert in other communities in the State on similar applications. Motion made by Member DeAngelis to accept her as an expert in the field of radio frequency. Motion seconded by Member McNamara. Motion carried with a 5-0 vote.**

**The witness reviewed a coverage map/site survey with the Members which indicated current and lack of coverage areas. The site survey showed the best location for the proposed antennas. Attorney Pare informed the Board that applicant has looked at the existing police and water towers but the Town was not interested.**

**Chair read into the record Technical Review Committee recommendations:**

**Members of the Technical Review Committee visited the site and reviewed the submitted project plans and application. The Planning Board recommends Approval of this application. The proposed project represents the installation, operation and maintenance of a wireless telecommunications facility attached to an existing electrical transmission tower. The supporting equipment will be located at the**

**base of the existing tower. The Planning Board feels that the applicant presents a realistic site layout that meets the intent of the zoning with special consideration given to the Article 11.A.7.14. The Planning Board feels that the telecommunication installation will not be detrimental to the surrounding residential neighborhood. The Board feels that the use variance will not alter the general character of the surrounding area and will not impair the intent or purpose of the zoning ordinance or Comprehensive Plan.**

**Discussion:**

**Chair stated applicant had clarified the fact that a chain link fence without barbed wire would surround the equipment.**

**Motion made by Member DeAngelis to approve the application with a condition that the chain link fence at the site will not have any barbed wire. He further stated:**

- The hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not due to the general characteristics of the surrounding area and is not due to a physical or economic disability of the applicant. Applicant needs to fulfill service requirements to its customers.**
- The hardship is not the result of any prior action of the applicant and does not result primarily from the desire of the applicant to realize greater financial gain. Applicant needs to provide service to its subscribers.**
- The granting of this variance will not alter the general character of**

**the surrounding area or impair the intent or purpose of the Lincoln Zoning Ordinance or the Lincoln Comprehensive Plan. Additional antennas will have a minimal impact at the site.**

- The relief requested is the least relief necessary. Board heard testimony that because of the topography in the area is antenna is needed to increase service area.**
- The subject land or structure cannot yield any beneficial use if it is required to conform to the provisions of the Zoning Ordinance.**

**Lincoln Seventh Day Adventist, 1000 Smithfield Avenue, Lincoln, RI – Application for Special Use Permit for a mixed use of church and school.**

**AP 6, Lots 183/184/400/401/418 Zoned: RG 7**

**Represented by: Michael Crane, Esquire**

**This application was continued from June Zoning Board meeting. Chair read into the record standards that need to be met for a Special Use Permit.**

**Witness:**

**Pastor Omar Jarvis**

**Pastor Jarvis informed the Board that the site has been used as a church since 1895 and was designed with its current layout. Pastor Jarvis has been at this location since 2008 and wants to upgrade the property and the courtyard area. Three classrooms and a dining area are located in the lower level and the courtyard needs to be enclosed to prevent any future damage to the building. He would also like to add one classroom and a library room. The school consists of Pre K to Grade 8 instruction with a current capacity of 60 students. His wife is the principal of the school. Three school buses transport students and the rest are dropped off by parents/carpool. They plan on installing a six foot fence to replace an existing four foot fence at the playground and stripe the parking lot. Once construction of new classrooms is complete the school would have a maximum of eighty students. Majority of additional students would be siblings of existing students.**

**Chair stated the plans show seventy-three (73) parking spaces at the entrance to the school. Pastor replied the u-drive is currently used for overflow and the school buses would have access to this to drop off students. Attorney for applicant informed Board that a traffic study was completed at the site.**

**Witness:**

**Paul Bannon, Traffic Study Engineer**

**Mr. Bannon has testified before this Board in the past and submitted**

his resume into the record as Exhibit #1. Motion made by Member Nickerson to accept Mr. Bannon as an expert witness. Motion seconded by Member Lyle. Motion carried with a 5-0 vote.

Mr. Bannon stated he was retained to assess the impact of additional traffic in the area and conducted field visits. He also obtained Department of Transportation data for the site and reviewed Police records for safety deficiencies. He determined that safe access can be provided to the entrance driveway and the speed limit for this area is 35 mph. The average is two accidents per year in this area and forty-five (45%) percent of the students are bused to the site. Additional classroom will result in little additional traffic. Mr. Bannon submitted his study into the record as Exhibit #2.

Chair read into the record Technical Review Committee and Planning Board recommendations:

Members of the Technical Review Committee visited the site and reviewed the submitted plans and application. The Planning Board recommends Approval with Conditions of the Special Use Permit for a mixed use of a church and a school. The application represents the revitalization of the existing church and school building. The Planning Board feels that the special use permit will not alter the general character of the surrounding area and will not impair the intent and purpose of the zoning ordinance and the Comprehensive Plan. However, the Board feels that exterior site improvements are needed to create a safe flow of vehicular traffic within the site and

also provide buffering to abutting property owners. The Planning Board recommends the following conditions of approval: the parking shall be striped, signage shall be installed that directs visitors to the proper entrance and exit, signage shall be installed directing visitors to the student drop-off area and visitor parking areas, additional evergreen tree buffering shall be installed along the property lines that abut residential properties, and the existing playground area shall be enclosed with new fencing.

**Opposed:**

**Monica Horan, 6 Parker Street, Lincoln, RI**

She objects to a school proposal on a small parcel of land. Pre K through grade 8 would result in a total of 10 grade levels. The Fairlawn Early Learning Center is located at the rear of the property and the area is residential. She was unsure if all requirements were met. Chair replied that there were no dimensional issues with the application. Ms. Horan stated that the ordinance requires 9'x20' parking spaces and what was indicated on the plans was 9'x18'.

Chair informed her that there were more than what is required for parking spaces at the site and the school has been in use for many years. Church is approximately 8,200 square feet which requires a total of 34 parking spaces. Applicant is providing 73 spaces.

The Board was advised that this application requires consideration of the Federal law: Religious Land Use and Institutionalized Persons Act



**of 2000 (RLUIPA) and that beyond the considerations set forth in the special use permit standards, in order to deny the application the Board must find that there is a compelling governmental interest in denying the application and that the denial of the application is the least restrictive means of furthering that interest.**

**Motion made by Chair to approve Special Use Permit for the church stating:**

- That the Special Use is specifically authorized under §260-11C.**
- That the Special Use meets all the criteria set forth in this Ordinance authorizing such special use. Application meets dimensional criteria and the building is existing.**
- That the granting of the Special Use will not alter the general character of the surrounding area. Church has been at this site since 1961 and is a part of the neighborhood. Church does not need the special use permit, as it is a pre-existing legal nonconforming use.**
- That the granting of the Special Use will not impair the intent or purpose of this Ordinance nor the Lincoln Comprehensive Plan. The church exists at the site and applicant is seeking to make improvements.**

**Motion seconded by Member McNamara. Motion carried with a 5-0 vote.**

**Motion made by Chair to approve Special Use Permit for the school use with a condition that the parking spaces be striped in accordance**

with the requirements for parking spaces as set forth in the Ordinance and a buffer is installed for abutting neighbors. She further stated:

- That the Special Use is specifically authorized under §260-11A of this Ordinance.
- That the Special Use meets all the criteria set forth in this Ordinance authorizing such special use, including parking requirements.
- That the granting of the Special Use will not alter the general character of the surrounding area. A traffic study was conducted showing traffic flow will not affect the area and the expansion is minimal.
- That the granting of the Special Use will not impair the intent or purpose of this Ordinance nor the Lincoln Comprehensive Plan. The use is authorized under §260-11A and will have a minimal impact on the neighborhood. The school use is incidental to the Church and will operate during the week. Sufficient parking is proposed.

Motion seconded by Member Nickerson. Motion carried with a 5-0 vote.

Henrique & Maria Silveira, 15 Hillside Drive, Lincoln, RI – Application for Dimensional Variance seeking front setback relief for the construction of a covered porch.

AP 45, Lot 68 Zoned: RA 40

Chair read standards that need to be met for a Dimensional Variance

**into the record at the June meeting.**

**She further stated that the Board had received new renderings and a building permit had already been issued. The addition does not include the existing garage and front porch step issue has been resolved.**

#### **Witness**

**John Hoyle, Jr., Designer/Consultant**

**The new renderings provide a survey plan with the porch stairs. Applicant is seeking 18.9 feet relief from the corner porch and stairs.**

**No opposition present.**

**Chair read into the record Technical Review Committee and Planning Board recommendations:**

**Members of the Technical Review Committee visited the site and reviewed the recently revised site plans and application. The Planning Board recommends Denial of the application for a dimensional variance seeking front setback relief for the construction of a covered porch. The Board also noted that none of the houses on this road have porches on the front of their houses. This addition will not conform to the surrounding houses. The Planning Board feels that the application does not meet any of the standards for relief of a dimensional variance as presented in the Zoning Ordinance. The Planning Board feels that the site plan and application does not represent the least relief necessary and is not due to the unique**

**characteristics of the subject land.**

**Discussion:**

**Chair stated the existing home had stairs the proposed porch is the same depth as the existing stairs.**

**Motion made by Chair to grant relief of 21.1 feet front relief and 24.04 side relief for the garage to correct non-conformance issue. She further stated:**

- The hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not due to the general characteristics of the surrounding area and is not due to a physical or economic disability of the applicant. The already has stairs.**
- The hardship is not the result of any prior action of the applicant and does not result primarily from the desire of the applicant to realize greater financial gain. Applicant is seeking to improve the property.**
- The granting of this variance will not alter the general character of the surrounding area or impair the intent or purpose of the Lincoln Zoning Ordinance or the Lincoln Comprehensive Plan. What applicant is proposing will bring the house in conformance with the area.**
- The relief requested is the least relief necessary. The porch will not encroach further than the existing stairs.**
- The hardship amounts to more than a mere inconvenience, meaning there is no other reasonable alternative to enjoy a legally permitted**

**beneficial use of the property. The property was not originally located in a cul de sac. A portion of the property was taken to create the cul de sac.**

**Motion seconded by Member Nickerson. Motion carried with a 5-0 vote.**

**Paul & Susan McKenna, 34 Kilburn Avenue, Lincoln, RI – Application for Dimensional Variance seeking front, side and rear yard setbacks for the construction of an addition.**

**AP 10, Lot 293 Zoned: RG 7**

**Represented by: John Shekarchi, Esquire, 132 Old River Road, Lincoln, RI**

**This application was continued from May agenda. Chair read into the record standards that need to be met for a Dimensional Variance.**

**Applicants want to expand their home so grandmother and aunt can move in. Have spoken with the abutters and they have no objections.**

**Submitted into the record correspondence from Beverly Trenn who is an abutter (Exhibit #1). Document was signed and notarized. Daughter moved into the neighborhood to be close to family. Applicants are seeking 6.4 feet rear yard, 6.5 feet side yard relief. This is a corner lot with town water and sewer services.**

**Witness:**

## **Edward Pimentel, Land Use Expert**

**Mr. Pimentel has appeared before this Board on many past applications. Submitted his resume into the record as Exhibit #2. Motion made by Member Lyle to accept Mr. Pimentel as an expert witness. Motion seconded by Member DeAngelis. Motion carried with a 5-0 vote.**

**Mr. Pimentel submitted his report into the record as Exhibit #3. He viewed the site and looked one block in all directions (approximately 100 lots). Upstairs of house will be handicap accessible. House is currently 1,275 sq.ft. and will be increased to 1,600 sq.ft. total. Average homes in area are 2,000 sq.ft. Applicants have lived at this location since 1962. The roof overhang is a convenience issue and there is a deck at the rear of the premises. Meets all criteria.**

**Applicant informed Board windows will match existing house which is Cape Ann style and they plan on putting on a new roof. Only changes are being made on the first floor Interior configuration of the existing house had a lot to do with the new interior design.**

**Chair read into the record Technical Review and Planning Board recommendation:**

**Members of the Technical Review Committee visited the site and reviewed the submitted plans and application. The Planning Board recommends Denial of the application for a dimensional variance seeking front, side and rear yard setbacks relief for the construction**

of two additions and one deck. The Planning Board feels that the application does not meet any of the standards for relief of a dimensional variance as presented in the Zoning Ordinance. The applicant did not offer any reasoning for their request within their application. The Planning Board feels that the site plan and application does not represent the least relief necessary and is not due to the unique characteristics of the subject land.

**In Favor:**

**Jeff Condon (Rear Abutter)**

Has no objection to what is being proposed. Has met grandmother who will be living with applicants.

**Beverly Trenn (Abutter)**

She is the neighbor whose letter was submitted as Exhibit #1.

**No opposition present.**

**Discussion:**

Member Nickerson looked at the area and there are other homes with covered porches. Chair agreed. What applicants are requesting is the least relief necessary.

**Motion made by Member DeAngelis to grant 6.4 foot south side , 3.5 foot rear yard, 1.6 foot east front stairs and .5 north relief. He further stated:**

- The hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not due to the general characteristics of the surrounding area and is not due to a physical or economic disability of the applicant. Applicants are seeking to make renovations to accommodate grandmother and aunt**
- The hardship is not the result of any prior action of the applicant and does not result primarily from the desire of the applicant to realize greater financial gain. Family members will be moving into the home.**
- The granting of this variance will not alter the general character of the surrounding area or impair the intent or purpose of the Lincoln Zoning Ordinance or the Lincoln Comprehensive Plan. Two abutters testified they have no objections.**
- The relief requested is the least relief necessary. No other placement for addition what is being asked for.**
- The hardship amounts to more than a mere inconvenience, meaning there is no other reasonable alternative to enjoy a legally permitted beneficial use of the property. Applicants are seeking to improve their property for ailing family members.**

**Motion seconded by Chair Karampetsos. Motion carried with a 5-0 vote.**



**Paulo Tanasio, 1170 Smithfield Avenue, Lincoln, RI – Application for Special Use Permit for a professional office use at property located at 1170 Smithfield Avenue, Lincoln, RI.**

**AP 7, Lot 84 Zoned: RG 7**

**Paulo Tanasio, 1170 Smithfield Avenue, Lincoln, RI – Application for Special Use Permit for mixed residential/commercial use at property located at 1170 Smithfield Avenue, Lincoln, RI.**

**AP 7, Lot 84 Zoned: RG 7**

**Chair read into the record standards that need to be met for a Special Use Permit.**

**Smithfield Avenue consists of mixed commercial and residential properties. At the site, 392 sq. ft. will be used by applicant for law office/real estate office and rest of site will be an apartment. Has provided six parking spaces for commercial use - ordinance requires four. Traffic will be minimal and complies with Comp Plan. To the left of the proposed site is an auto shop. A kitchen area on first floor will be part of the rental property on second floor which is currently vacant. He will not reside at the site. Any signage installed will conform to zoning.**

**Chair read into the record Technical Review Committee and Planning Board recommendations:**

**Members of the Technical Review Committee visited the site and reviewed the submitted plans and application. The Planning Board**

**recommends Approval of the Special Use Permit for a professional office use at property located at 1170 Smithfield Avenue, Lincoln, RI. The application represents the redevelopment of a small space located within the existing house as a law office. The Planning Board feels that the special use permit will not alter the general character of the surrounding area and will not impair the intent and purpose of the zoning ordinance and the Comprehensive Plan. The Board feels that the size and nature of the proposed professional use will not create a burden on the existing neighborhood. The property is located on a main thoroughfare and provides enough safe off-street parking for future clients. The Planning Board would like to bring to the attention of the applicant that the building may require handicap access, a commercial backflow preventor for the public water system, and other building code requirements. These concerns should be researched and addressed by the selected building contractor.**

**Members of the Technical Review Committee visited the site and reviewed the submitted plans and application. The Planning Board recommends Approval of the Special Use Permit for a professional office use at property located at 1170 Smithfield Avenue, Lincoln, RI. The application represents the redevelopment of a small space located within the existing house as a law office. The Planning Board feels that the special use permit will not alter the general character of the surrounding area and will not impair the intent and purpose of the zoning ordinance and the Comprehensive Plan. The Board feels that the size and nature of the proposed professional use will not create a**

**burden on the existing neighborhood. The property is located on a main thoroughfare and provides enough safe off-street parking for future clients. The Planning Board would like to bring to the attention of the applicant that the building may require handicap access, a commercial backflow preventor for the public water system, and other building code requirements. These concerns should be researched and addressed by the selected building contractor.**

**No opposition present.**

**Discussion:**

**Chair visited the site and noticed the mixed use. Feels request for 392 sq.ft. of commercial office space is reasonable and consolidation of both applications makes sense.**

**Motion made by Member Lyle to approve the application stating:**

- That the Special Use is specifically authorized under this Ordinance**
- That the Special Use meets all the criteria set forth in this Ordinance authorizing such special use. Application meets all standards and applicant has provided adequate parking spaces.**
- That the granting of the Special Use will not alter the general character of the surrounding area. There similar businesses in the area.**
- That the granting of the Special Use will not impair the intent or purpose of this Ordinance nor the Lincoln Comprehensive Plan. The Town's Comprehensive Plan allows professional use in the area.**

**Motion seconded by Member McNamara. Motion carried with a 5-0 vote.**

**Motion made by Member DeAngelis to adjourn the meeting. Motion seconded by Member McNamara. Motion carried with a 5-0 vote.**

**Respectfully submitted,  
Ghislaine D. Therien  
Zoning Secretary**